

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RON DAMON BROWN,
Petitioner.

No. 2 CA-CR 2015-0273-PR
Filed September 15, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Maricopa County

No. CR2009117976001DT

The Honorable Lisa M. Roberts, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Ron Brown, Florence
In Propria Persona

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MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 Ron Brown seeks review of the trial court's orders dismissing his notice of post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., and denying his request for the preparation of transcripts. We will not disturb those rulings unless the court abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Brown has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Brown was convicted of two counts of sexual conduct with a minor and one count of sexual abuse. The trial court sentenced him to a five-year prison term for sexual abuse and consecutive terms of life imprisonment for sexual conduct. His convictions and sentences were affirmed on appeal. *State v. Brown*, No. 1 CA-CR 10-0428 (memorandum decision filed Sept. 8, 2011).

¶3 Brown filed an untimely notice of post-conviction relief claiming pursuant to Rule 32.1(f) that his failure to timely seek relief was without fault on his part. The trial court summarily dismissed that notice, and Brown did not seek review of that ruling. He instead again sought relief pursuant to Rule 32.1(f), and the court again dismissed his notice, and we denied relief on review. *State v. Brown*, No. 2 CA-CR 2013-0198-PR (memorandum decision filed Jul. 23, 2013).

¶4 In December 2013, Brown filed another notice of post-conviction relief, this time raising a claim of newly discovered evidence. He stated that "facts exist that the witness committed perjury" and "gave one statement in the police report and then gave a different statement on the witness stand." The trial court summarily dismissed the notice, observing Brown had "fail[ed] to

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support this claim” because he had not provided “any facts, affidavits, records, or other evidence to support why these facts could not have been produced at trial through reasonable diligence.” This petition for review followed.

¶5 A claim of newly discovered evidence pursuant to Rule 32.1(e) may be raised in an untimely proceeding like this one. Ariz. R. Crim. P. 32.4(a). But to avoid summary dismissal, a defendant must provide in the notice of post-conviction relief “meritorious reasons . . . substantiating the claim and indicating why the claim was not stated in the previous petition or in a timely manner.” Ariz. R. Crim. P. 32.2(b). Brown’s notice does not meet this requirement. He did not explain when he discovered the alleged perjury, nor did he provide any detail about the witness’s statements or how they might have affected the outcome of his trial. Thus, the court was required to summarily dismiss his notice.¹

¶6 Brown asserts on review, however, that he was unable to adequately support his claim because he lacked “the necessary transcripts” due to the trial court’s denial of his request for them. In September and November 2012, Brown filed requests for preparation of the transcripts from his first trial, which had ended in a mistrial. The court denied both requests because Brown did not have a pending Rule 32 proceeding and had not explained why the transcripts were needed. With his notice of post-conviction relief, he filed an identical request, which the court also denied.

¶7 A trial court is required to order the preparation of only those transcripts “that it deems necessary to resolve the issues to be

¹ The trial court referred to Brown’s failure to provide “affidavits, records, or other evidence” in support of his claim. This language appears in Rule 32.5, which sets forth the requirements for a petition for post-conviction relief, not an initial notice. Thus, to the extent the court relied on Rule 32.5 in dismissing Brown’s notice, that analysis was improper. However, we will uphold the court’s ruling if it was correct for any reason. See *State v. Lopez*, 234 Ariz. 513, ¶ 10, 323 P.3d 1164, 1166 (App. 2014); *State v. Olquin*, 216 Ariz. 250, n.5, 165 P.3d 228, 231 n.5 (App. 2007).

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raised in the petition” for post-conviction relief. Ariz. R. Crim. P. 32.4(d). In light of Brown’s failure to comply with Rule 32.2(b) in his notice, the court did not err in rejecting his request for transcripts.

¶8 Although review is granted, relief is denied.